UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,413	07/11/2003	Fred Wehling	208-017US1	6803

27791 7590 03/26/2007

ALLISON JOHNSON, P.A.
LAKE CALHOUN EXECUTIVE CENTER
3033 EXCELSIOR BLVD., SUITE 467
MINNEAPOLIS, MN 55416

EXAMINER	
KRASS, FREDERICK F	
ART UNIT	PAPER NUMBER
1614	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/618,413	WEHLING ET AL.	
	Examiner	Art Unit	
	Frederick Krass	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18 and 21-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 21-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Previous Rejections

Unless specifically maintained infra, all previous rejections are withdrawn.

Obviousness Rejection (New)

1) Claims 1-5, 10-15 and 21-24 are rejected under 35 USC 103(a) as being unpatentable over Philips (US Pub. 2003/0180389) in view of Liang et al ("Development and validation of a photometric titration method for the quantitation of sodium chondroitin sulfate (bovine) in Cosequin DS chewable tablet", *Journal of Pharmaceutical and Biomedical Analysis*, vol. 28, pp. 245-249 (2002)).

Phillips has been discussed in detail in the previous Office action and differs from the claims as now amended insofar as it does not specify the use of bovine chondroitin.

Applicant asserts that he has "discovered effervescent compositions that include chondroitin derived from a bovine source are more palatable relative to effervescent compositions that include chondroitin obtained from shark and porcine sources". (Remarks, page 5, fifth paragraph). This is alleged to overcome the tendency of chondroitin to have a bad taste, as outlined in applicant's specification at page 1, lines 11-13.

There is however no objective evidence on this record to support applicant's allegations. Chewable tablets based on bovine chondroitin (Cosequin® DS chewable tablets) are in fact commercially available, as illustrated by the secondary reference. If

bovine cartilage were so undesirable, it is not seen why it would be used in a commercially available chewable tablet where the sustained period of use would render unpalatability an even more pressing issue than with more ephemeral products such as effervescent tablets.

Generally, it is prima facie obvious to select a known material for incorporation into a composition, based on its recognized suitability for its intended purpose. *See* Sinclair & Carroll Co. v. Interchemical Corp., 325 US 327, 65 USPQ 297 (1945); see also In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to have used bovine chondroitin in manufacturing the effervescent tablets of the primary reference, motivated by the understanding that same is clearly suitable for use in orally administrable tablets as taught by the secondary reference, consistent with the reasoning of the cited precedent.

2) Claims 6 and 7 are rejected under 35 USC 103(a) as being unpatentable over Philips (US Pub. 2003/0180389) in view of Liang et al ("Development and validation of a photometric titration method for the quantitation of sodium chondroitin sulfate (bovine) in Cosequin DS chewable tablet", *Journal of Pharmaceutical and Biomedical Analysis*, vol. 28, pp. 245-249 (2002)), the combination being taken further in view of Fox (US Pub. 2001/0018082.

The primary and secondary references, and the motivation for combining their teachings, is provided supra. The rationale for applying the teachings of the tertiary reference thereto remains substantially the same as that provided at page 7 of the previous Office action.

3) Claims 8 and 9 are rejected under 35 USC 103(a) as being unpatentable over Philips (US Pub. 2003/0180389) in view of Liang et al ("Development and validation of a photometric titration method for the quantitation of sodium chondroitin sulfate (bovine) in Cosequin DS chewable tablet", *Journal of Pharmaceutical and Biomedical Analysis*, vol. 28, pp. 245-249 (2002)), the combination being taken further in view of Little (USP 1,616,587).

The primary and secondary references, and the motivation for combining their teachings, is provided supra. The rationale for applying the teachings of the tertiary reference thereto remains substantially the same as that provided at page 8 of the previous Office action.

4) Claims 16-18 are rejected under 35 USC 103(a) as being unpatentable over Philips (US Pub. 2003/0180389) in view of Liang et al ("Development and validation of a photometric titration method for the quantitation of sodium chondroitin sulfate (bovine) in Cosequin DS chewable tablet", *Journal of Pharmaceutical and Biomedical Analysis*, vol. 28, pp. 245-249 (2002)), the combination being taken further in view of Fox (US Pub. 2001/0018082), further in view of Little (USP 1,616,587) .

The primary and secondary references, and the motivation for combining their teachings, is provided supra. The rationale for applying the teachings of Fox and Little thereto remains substantially the same as that provided at page 9 of the previous Office action.

Action is Final, Necessitated by Amendment

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick Krass whose telephone number is (571) 272-0580. The examiner can normally be reached at (571) 272-0580 on Monday through Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass
Primary Examiner
Art Unit 1614